

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 CIVIL APPLICATION NO.12021 OF 2021
IN FAST/6097/2020

INDUBAI UTTAM PAWAR AND ANR

VERSUS

THE RELIANCE GENERAL INSURANCE CO. LTD.,
THR ITS LEGAL OFFICER, AURANGABAD AND ORS

Mr A.S. Salve, Advocate for Applicants
Mr S.S.Patil, Advocate for Respondent No.1
Mr V.R. Mundada, Advocate for Respondent No. 4

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 16th NOVEMBER, 2021

PER COURT :

1. It is an application for withdrawal of amount moved by the applicants.

2. Heard Mr Salve, learned counsel for the applicants and Mr S.S. Patil, learned counsel for respondent No.1/Insurance Company and Mr V.R. Mundada, learned counsel appearing for respondent No. 4. Mr J.I. Shaikh, learned counsel for respondent Nos. 2 and 3 remained absent when the matter is called out.

3. Mr Patil, learned counsel for respondent No.1/Insurance Company strongly opposed to allow the application to the extent of applicant No.2/brother of the deceased. He pointed out that applicant No. 2, who is stated to be brother of the deceased is a major and cannot be said to be dependent on the income of the deceased. As such, he is

not entitled to withdraw the amount. He has no objection for withdrawal of amount to the extent of the mother of the deceased.

4. Mr Salve, learned counsel for the applicants submitted that the Insurance Company has not raised that point before the Tribunal at any point of time. It is for the first time, the Insurance Company is raising this kind of plea which cannot be considered. He submitted that the Tribunal has considered this aspect of dependency and he invited my attention to para No. 13 of the impugned Judgment and Award and submitted that the Tribunal has treated mother and brother of the deceased as dependent of the deceased. As such, both the applicants are entitled to withdraw the amount deposited by the Insurance Company.

5. Perused the impugned Judgment and Award passed by the Motor Accident Claims Tribunal at Shrirampur in M.A.C.P. No. 205/2018. The Tribunal was pleased to award compensation of Rs. 29,92,802/- inclusive of No Fault Liability and the Tribunal also made apportionment of the amount of compensation in the operative order clause No. 4.

6. As on today, widow and daughter of the deceased are not before this Court. Only mother and brother of the deceased are before this Court praying for withdrawal of the amount. So far as applicant No.1/ Indubai Uttam Pawar (mother of the deceased) is concerned, she can be allowed to withdraw the amount of compensation in view of the fact that she was dependent of the deceased and secondly, Insurance Company has no objection.

7. So far as applicant No. 2 (Dadasaheb Uttam Pawar) is concerned, he stated to be brother of the deceased and his age is 30 years. It is a disputed fact whether Dadasaheb Uttam Pawar was dependent on the income of the deceased. On perusing the impugned Judgment and Award passed by the Tribunal, the Tribunal has treated mother and brother of the deceased as dependent. However, there is no specific finding supported by evidence. As such, I am of the view that brother of the deceased cannot be allowed to withdraw the amount of compensation. That issue is raised though first time before this Court must be taken into account while considering the application for withdrawal of amount.

8. Having regard to the above reasons, I am convinced to allow this application partly as under :-

ORDER

- (I) The application for withdrawal of amount is partly allowed.
- (II) The applicant No.1/Indubai Uttam Pawar (mother of the deceased) is allowed to withdraw 75 % of her share of the amount of compensation awarded by the Tribunal on furnishing usual undertaking before the Registrar (Judicial) of this Court.

[SHRIKANT D. KULKARNI, J.]

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